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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC - MAIL ROOM

In the Matter of
Implementation of
Commission's EEO Rules

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) MM Docket 94-34
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COMMENTS FROM TOM S. WHITEHEAD, INC.
Licensee of Radio Stations KWHI-AM and KTTX-FM

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President

May 16, 1994

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GENERAL STATEMENT

Tom S. Whitehead, Inc., licensee of Radio Stations KWHI-AM and KTTX-FM, is a family corporation located in Brenham, Texas. KWHI-AM was put on the air in 1947 by Tom S. Whitehead, Sr. and KWHI-FM followed in 1964. Three generations of the Whitehead family have been involved with the ownership and management of the stations. Tom S. Whitehead, Jr., president of the corporation, served as manager of the stations for more than 25 years and his son, Tom Dee Whitehead, is the current manager. Four other family members have also been involved with the operation of the stations. During the 47 years of radio station ownership, the family has attempted to be a fair-minded equal opportunity employer and will continue to do so. We have had no problem in finding, hiring and promoting qualified female employees, but locating minority applicants has been extremely difficult. In my talks with other small market broadcasters, this is not unusual. Even minimally-qualified minority applicants often can not be found when a position comes open. Brenham has a population of about 13,000 and is located in Washington County which has a population of about 25,000. Attempts to find minority applicants in larger cities outside our county have also been disappointing. Stations in the larger markets are also looking for qualified minorities and with their resources and higher salaries get the first chance at their own residents. Smaller markets are also faced with losing their good employees, whether minority or not, to the large markets where salaries are higher and opportunities for advancement are better. To employees of a family-run station it is obvious that some of the top positions will seldom come open as they are filled by family members. Many young employees and potential employees simply do not want to work in a small town and are attracted to the bright lights of the cities where the opportunities are greater to socialize with other young people.

Attempting to find and hire qualified minorities is one thing. Keeping the records to document every hire, continually reassessing your EEO program and continually seeking new minority sources is another. From experience, I can tell you a small market radio station manager wears many hats and never has enough time to get everything done even though he comes back to the station at night and works on weekends. If he is doing his job right, his station is involved with virtually every community activity from school bond issues and recruitment of new industries to football games and spring festivals. The demands on his time and his staff are continuous from the community. I am not talking about one of these satellite-fed radio stations which plays music interspersed with commercials and network news. I am talking about a full-service station with live programming, local news, sports, editorials and total community involvement. Because of their importance, EEO matters in a small market station generally are another chore that must be taken care of by the manager. Small market stations can not afford to hire someone to handle EEO as larger stations often

do. Tom S. Whitehead, Inc. respectfully requests the FCC to reduce the burden of EEO recruiting and record-keeping for small market radio stations. Specific recommendations follow in this document.

NO RETROACTIVE POLICIES

The new EEO policies announced Feb. 1, 1994 should not be made retroactive. A station could have met all of the old requirements and still be liable for sanctions under the new policies. For example: a station could have met the requirements for 50 per cent of parity for minorities and women in its county work force and still be fined if it did not have documentation that it had "an adequate pool of women and minorities" in at least 66 per cent of its hires. Also, we have not been given a definition of "adequate pool."

PART-TIME EMPLOYEES

Documentation of efforts for part-time hires should be eliminated. However, stations should be given credit for employing women and minorities as part-time employees. Small stations especially find it necessary to hire part-timers to fill out their staffs and these part-timers often later become full-time employees after training and experience. Giving a station credit toward meeting its quota of minorities and women would be a real incentive for hiring them as part-timers. Four hours per week would be an appropriate starting point for giving credit since many air shifts are four hours long. Documentation of part-time hires should not be required because the turnover in part-time employees is much higher than full-time and keeping records on them is particularly burdensome.

INTERNS

Broadcasters should also be given credit toward meeting their female and minority quotas through the use of internships for students. A full-time summer internship for a woman or a minority student should count as 1/3 of an employee for the annual employment report and a six month part-time internship should also count as 1/3 of an employee.

SMALL MARKET DEFINITION

Small market stations should be defined as those stations whose city of license is located in counties of under 100,000 population.

SMALL MARKET RELIEF

Because of the increasing difficulties under which small market radio stations operate in the 1990's, they should be given relief from the extensive EEO record-keeping and recruitment regulations now in effect and those proposed for the future. As a small market broadcaster who has several decades of experience in the business, I can testify to the fact that running a successful station is more difficult today than in years past. The number of dollars available to support a full-service radio station in a small market has not kept up with the costs of operation. One major factor in this trend is one I call the "Wal-Mart Syndrome." When a giant Wal-Mart Store comes to town, it tolls the death-knell for many small retailers who can not compete. Since Wal-Mart does practically no radio advertising, this means a net loss of revenue which the station previously received from the small merchants. The same thing happens with other big chain stores, but thankfully some of them do some radio advertising. The competition for the advertising dollar has also increased. With the advent of the 80/90 Docket and expansion of the FM frequencies, more small markets have seen a second or third station arrive on the scene. Where you once had one or two financially healthy stations serving a town, you now often find two or three fighting to stay alive. This necessity to cut costs accounts in large part for the rush to satellite-fed operations and the demise of local news and real public service which small market stations traditionally provided in the past. Cable systems have also gotten into the act, often selling ads at lower cost than radio advertising. And, we still have competition from digital satellite radio to look forward to. The over-population of the radio dial, the shrinking number of ad dollars and the increased competition for those dollars have also led to the Local Management Agreement where one station takes over the operation of another. This is not necessarily an improvement for the community and it clearly demonstrates a weakness in the station that was taken over. The FCC should be interested in the financial health of small market radio stations, because it surely impacts their ability to serve their communities and their ability to commit time and resources to recruiting, hiring and paying decent salaries to women and minorities.

Because of the difficulties small market stations are experiencing, it is requested that these stations be given the following relief from EEO regulations:

1. Stations whose city of license is in a county under 100,000 population will not be required to keep records and document the recruitment and hires of females and minorities provided that their staff profile meets at least 50 per cent of parity with the work force in the county.

2. Continual reassessment of the station's EEO program will not be required as long as it meets the 50 per cent quota.

3. Should a station fail to meet the 50 per cent quota

for two consecutive years, it will automatically be subject to the EEO rules for recruitment and record-keeping for the remainder of its license period. If the station is in the final year of its license period, it will be subject to the regulations for the ensuing three years.

(Small market stations, under these rules, would have a great incentive to meet their quotas and thus eliminate the record-keeping burden. Further, exemptions for small market stations should be based on market size and not staff size. A station that is trying to fully serve its community with live programming, local news and local involvement will necessarily have a larger staff than one which utilizes satellite programming and little else. It would be unfair to impose burdensome recruiting and record-keeping on the full-service stations and exempt only those that provide minimal local service with small staffs.)

PETITIONS TO DENY

A number of stations have in the past had petitions to deny their license renewal filed against them by individuals and organizations who allege EEO violations by the stations. The petitioners then approach the station offering to withdraw the petition if the station will adopt an EEO program drawn up by the petitioners who also ask to be paid for their work. To prevent this practice from becoming an attempt to extort money from the stations, the FCC should issue a regulation preventing stations from paying money to individuals or organizations who have filed against the stations and preventing the petitioners from accepting money. The mere filing of such a petition automatically costs the station hundreds or thousands of dollars in legal fees to defend itself. Thus, even the threat of such a filing, whether warranted or not, is of great concern to stations, especially small market stations who do not have the resources to have a regular Washington attorney and can not afford high legal fees.

THREE STRIKES YOU'RE OUT

Commissioner Jim Quello's suggestion for a "Three strikes and you're out policy" makes good regulatory sense. This policy would provide a warning on the first EEO violation; the second time a fine; and the third time a fine with a short-term renewal. Along with the initial warning, the FCC could send the station a list of recommended suggestions for improving its EEO program. The objective is to provide jobs in the broadcast industry to women and minorities and this could be achieved better with a more co-operative, less adversarial relationship between the Commission and broadcast stations.

MINORITY/FEMALE ENTREPRENEURS

Broadcast stations, especially small market stations, should not be required to "encourage minority and female entrepreneurs to conduct business with all parts of (their) operations." This is not likely to have much practical effect on the purchasing done by stations and will become another recruiting and record-keeping burden.

PROMOTION AND RETENTION

The Commission's broadcast EEO enforcement regarding the promotion and retention of minority and female employees is adequate. It is natural for stations to attempt to retain and promote all good employees regardless of sex or race. Having to hire and train a new employee is always a costly process. For small market stations, the loss of a good employee is generally due to the employee leaving for more money at a larger station. The difficulty in recruiting minority employees already gives stations a special incentive to retain and promote those minorities they already have. Stricter EEO regulations could cause stations to improperly discriminate against non-minorities.

Inquiry Procedures

FCC inquiry letters are adequate as now issued asking for hiring information for the last three years of the license term. However, a station could be given the option of submitting more information including earlier years if the last three years are not representative of the full license term. On-site audits should be conducted only when the FCC has strong suspicions that the licensee has not provided accurate information. To hire a full staff of auditors nationwide would unnecessarily inflate the budget of the FCC and probably not result in any better enforcement of EEO policies than under the current regulatory scheme.

JOINT RECRUITMENT EFFORTS


State broadcaster associations can be helpful in finding and listing female/minority applicants. The FCC could encourage the state associations to set up such procedures and give them guidance on how this can be done without running afoul of federal regulations which prohibit employment questions about race and sex.

RENEWAL APPLICATIONS

More detailed information on renewal applications would mean only more more work for the licensee and the commission without any corresponding benefits. As long as the station meets the required quotas for women and minorities, detailed information on part-time hires, full-time hires, recruitment sources, etc. is not of great importance. The objective should be the employment of women and minorities, not the creation of a mass of records.

Respectfully submitted,

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